

REMARKS

Applicant has studied the Office action dated May 13, 2009. Currently, claims 1-17 and 21-23 are pending. Claims 1, 9, and 21 have been amended to more clearly claim disclosed embodiments. Claim 23 has been newly added. Claims 1 and 21 are independent claims. No new matter has been added as the amendments have support in the specification as originally filed.

It is submitted that the application, as amended, is in condition for allowance. Reconsideration is respectfully requested.

§ 112 Rejections

Claims 9 and 17 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Specifically, with regard to claim 9, the Examiner asserted that the phrase “provided between layers of the ankle protective cover” is indefinite as it is unclear what “layers” refers to. The Examiner further asserted that the nature of the “two-folded structure” is uncertain. Apparently, claim 17 was rejected because it depends from claim 9.

Claim 9 has been amended to recite that the ankle protective cover comprises a plurality of layers, and a cushioning layer provided between the plurality of layers of the ankle protective cover to absorb shock. It is respectfully submitted that the grounds for the rejection have been overcome and it is respectfully requested that the Examiner withdraw the rejection.

§ 103 Rejections

Claims 1-8, 10, 12-17, 21, and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Andujar (US 5,211,672) in view of Malpee (US 5,774,898). This rejection is respectfully traversed.

With regard to the rejection of independent claims 1 and 21, the Examiner asserted that Malpee discloses that each of the five toe insert parts extends toward each of the five toe holes to “cover the toes,” citing FIG. 1, while admitting that Andujar fails to disclose this feature. The Examiner further asserted that since Malpee discloses

“entire coverage” of toes, it reads on “at least a part of each of five toes” cited in claims 1 and 21.

With this paper, independent claims 1 and 21 have been amended and recite that five toe insert parts with five toe holes are provided on a toe portion and each of the five toe holes is provided at an end of each of the five toe insert parts to expose toes, and that toe insert parts provided at each toe portion and having toe holes at ends of each of the toe insert parts to expose toes, respectively. In contrast to Malpee, which discloses covering the entire toes, in the foot protection device and the protective footwear according to independent claims 1 and 21, the toes are exposed. Therefore, Malpee fails to cure the deficiencies of Andujar with respect to the five toe insert parts with five toe holes provided on a toe portion, wherein each of the five toe holes is provided at an end of each of the five toe insert parts to expose toes, as recited in independent claim 1, and with respect to the toe insert parts provided at each toe portion and having toe holes at ends of each of the toe insert parts to expose toes, as recited in independent claim 21.

Therefore, it is respectfully asserted that independent claims 1 and 21 are allowable over the cited combination of references. It is further respectfully asserted that claims 2-8, 10, and 12-17, which depend from independent claim 1, and claim 22, which depends from independent claim 21, also are allowable at least by virtue of their dependency from their respective allowable base claims.

Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Andujar in view of Malpee and further in view of Bettencourt (US 6,058,505). This rejection is respectfully traversed.

As asserted above, independent claim 1 is allowable over Andujar and Malpee. Moreover, it is respectfully submitted that Bettencourt fails to cure the above identified deficiencies of Andujar and Malpee with respect to independent claim 1.

Accordingly, it is respectfully asserted that claim 1 is allowable over the cited combination of references. It is further respectfully asserted that claim 9, which depends from independent claim 1, also is allowable at least by virtue of its dependency from the allowable base claim.

Claim 11 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Andujar in view of Malpee and further in view of Oh et al. ("Oh" US 4,972,609). This rejection is respectfully traversed.

As asserted above, independent claim 1 is allowable over Andujar and Malpee. Moreover, it is respectfully submitted that Oh fails to cure the above identified deficiencies of Andujar and Malpee with respect to independent claim 1.

Accordingly, it is respectfully asserted that claim 1 is allowable over the cited combination of references. It is further respectfully asserted that claim 11, which depends from independent claim 1, also is allowable at least by virtue of its dependency from the allowable base claim.

CONCLUSION

In view of the above remarks, Applicant submits that all pending claims of the present application are in condition for allowance. Reconsideration of the application, as originally filed, is requested.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned agent at the Los Angeles, California telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

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